

REMARKS

In response to the Official Action mailed May 23, 2002, the applicants reply as set forth below.

Claim Rejections - 35 U.S.C. § 112

The Official Action rejected claims 1, 35, 38, 59, 128, and 129 under § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In response, the applicants have amended those claims to address the issues raised in the Office Action, and requests reconsideration and withdrawal of the Section 112, second paragraph rejection of claims 1, 35, 38, 59, 128, and 129.

In addition, the applicants have amended several of the pending claims to address minor informalities noted during preparation of this response. The applicants request entry of these amendments, and submit that none of these informalities were related to the patentability of these claims.

Claim Rejections - Double Patenting

The Official Action rejected claims 1-171 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-267 of U.S. Patent Number 6,055,513. In response, the assignee of the present application encloses herewith a statement under 37 CFR 3.73(b) establishing its authority to take action in this application, a Terminal Disclaimer executed by the assignee of the present application and the cited '513 patent, and the terminal disclaimer fee of \$110. Entry and consideration of the Rule 3.73(b) statement and the Terminal Disclaimer is requested, as

well as reconsideration and withdrawal of the obviousness-type double patenting rejection of claims 1-171.

Claim Rejections - 35 U.S.C. § 102 and § 103

The Official Action rejected claims 1-3, 5, 6, 8, 13-15, 20-26, 30, 31, 33, 37, 41-45, 48-50, 52, 56-58, 68-71, 73, 74, 76, 81-83, 88, 89, 92-96, 100, 101, 103, 107, 111-115, 118-120, 122, 126-128, 138, 139-145, 149, 150 and 152 under 35 U.S.C. § 102(e) as being clearly anticipated by Smolen. The Official Action also rejected claims 4, 7, 9, 12, 27-29, 32, 38, 39, 47, 51, 59, 67, 72, 75, 77, 79, 80, 90, 91, 97-99, 102, 108, 109, 117, 121, 129, 146-148 and 151 under 35 U.S.C. § 103(a) as being unpatentable over Smolen. The Official Action also rejected 10, 11, 16-19, 34-36, 40, 46, 53-55, 60-63, 78, 84-87, 104-106, 110, 116, 123-125, 130-133, 136 and 137 as being unpatentable over Smolen in view of Walker. Finally, the Official Action rejected claims 64, 65, 134, 135, and 154-171 under §103(a) as unpatentable over Smolen in view of Kenney.

The applicants have reviewed the above rejections, and have amended claim 1 as shown below to recite the following feature, which applicants submit is neither disclosed nor suggested by Smolen:

“establishing communication via the electronic communications device
between the user and the system for purpose of a primary transaction for at
least one of specific item selected by the user[,].”

The applicants submit that the originally-filed specification supports the added feature at least at page 31, line 23.

Regarding the Smolen reference generally, the surveys or question-and-answer sessions conducted by Smolen fail to meet the above-underlined feature because such surveys are not *specific items* selected by the user. Instead, the Smolen user, when

logging onto the system to participate in these surveys, has not selected a specific item for which to transact, but instead has selected only to participate generally in the survey. Even if the user's participation in the survey results in a promotional offer from the Smolen system, that promotional offer fails to meet the above-underlined feature because such a promotional offer is not *selected by the user*, but is selected instead by the Smolen system based on the user's response to the survey questions. In light of these remarks and the amendments discussed herein, the applicants submit that the § 102(e) rejection of claim 1 should be reconsidered and withdrawn, along with similar rejections lodged against all claims depending ultimately from claim 1 in which Smolen is the sole or primary cited reference.

Similar revisions are made to the remaining independent claims 69, 139, 142, 154, and 165, and the comments made in the preceding paragraph apply equally to these other independent claims, and to all claims depending ultimately from each of these other independent claims in which Smolen is the sole or primary cited reference.

Conclusion

In conclusion, the applicants submit that this response addresses each issue raised in the Official Action mailed on 23 May 2002, and requests entry of this response into the record and reconsideration of the instant application.

The applicants enclose herewith a petition for a one-month extension of time to respond to the above Official Action, and an authorization to charge the applicable fees to a credit card.

Favorable action is requested at the Examiner's earliest convenience. If discussion of this application would expedite matters, the Examiner is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

WEST DIRECT, INC.

Dated: 23 SEPT 02

By: _____



Rocco L. Adornato
Reg. No. 40,480

11808 Miracle Hills Drive
Omaha, Nebraska 68154
(402) 965-7170



29129

PATENT & TRADEMARK OFFICE